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15 IN THE UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF CALIFORNIA

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18 UNITED STATES OF AMERICA,  
19 Plaintiff,  
20 v.  
21 OBDULIO JIMÉNEZ,  
22 DANIEL JOE BOBIAN,  
23 JOSE MANUEL AGUILERA BARBOSA,  
24 Defendants.

25 CASE NO. 2:20-CR-35-JAM  
26 STIPULATION REGARDING EXCLUDABLE  
27 TIME PERIODS UNDER SPEEDY TRIAL ACT;  
28 FINDINGS AND ORDER  
29  
30 DATE: September 21, 2021  
31 TIME: 9:30 a.m.  
32 COURT: Hon. John A. Mendez

33  
34 By previous order, this matter was set for status on September 21, 2021. By this stipulation and  
35 proposed order, the parties respectfully request that the Court continue the status conference until  
36 November 16, 2021. To the extent it is needed, this stipulation supplements the basis for exclusion of  
37 time under the Court's General Orders addressing public health concerns, and requests that the Court  
38 also exclude time between September 21, 2021, and November 16, 2021, under Local Code T4, for the  
39 reasons set forth below.

40  
41 Although the General Orders address the district-wide health concern, the Supreme Court has  
42 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
43 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.  
44 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no  
45 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at

1 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 2 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 3 or in writing”).

4 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 5 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice  
 6 continuances are excludable only if “the judge granted such continuance on the basis of his findings that  
 7 the ends of justice served by taking such action outweigh the best interest of the public and the  
 8 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless  
 9 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the  
 10 ends of justice served by the granting of such continuance outweigh the best interests of the public and  
 11 the defendant in a speedy trial.” *Id.*

12 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 13 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 14 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 15 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 16 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 17 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
 18 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
 19 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
 20 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

21 In light of the societal context created by the foregoing, this Court should consider the following  
 22 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
 23 justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> The parties note that the Court has already designated  
 24 a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010)  
 25 (noting any pretrial continuance must be “specifically limited in time”).

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 28 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
 Cal. March 18, 2020).

## STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants Obdulio JIMÉNEZ and Daniel Joe BOBIAN, by and through their counsel of record, hereby stipulate as follows:

1. The undersigned defendants now move to exclude time between September 21, 2021, and November 16, 2021, per Local Code T4, in addition to the exclusion of time the Court has already ordered in light of public health concerns cited by General Orders. Defendant Jose Manuel Aguilera BARBOSA has not yet appeared in this matter, and therefore does not join in this stipulation.

2. The parties agree and stipulate, and request that the Court find the following:

a) The government has produced 100 pages of discovery associated with this case, includes law enforcement reports, photographs, and investigative reports. This discovery has been produced directly to counsel or made available for inspection and copying.

b) Counsel for defendants need further time to consult with their clients, review discovery, investigate evidence and potential defense strategies, and otherwise prepare for trial.

c) Counsel for the defendants believe that failure to grant the above-requested continuance would deny them the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendants in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of September 21, 2021 to November 16, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

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1       3. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
2 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
3 must commence.

4       IT IS SO STIPULATED.

5       Dated: September 15, 2021

PHILLIP A. TALBERT  
Acting United States Attorney

6       \_\_\_\_\_  
7       /s/ JAMES R. CONOLLY  
8       JAMES R. CONOLLY  
9       Assistant United States Attorney

10       Dated: September 15, 2021

11       \_\_\_\_\_  
12       /s/ JENNIFER MOUZIS  
13       JENNIFER MOUZIS  
14       Counsel for Defendant  
15       DANIEL JOE BOBIAN

16       Dated: September 15, 2021

17       \_\_\_\_\_  
18       /s/ STEFAN E. SACKS  
19       STEFAN E. SACKS  
20       Counsel for Defendant  
21       OBDULIO JIMÉNEZ

## FINDINGS AND ORDER

IT IS SO FOUND AND ORDERED this 17<sup>th</sup> day of September, 2021.

22       \_\_\_\_\_  
23       /s/ John A. Mendez  
24       THE HONORABLE JOHN A. MENDEZ  
25       UNITED STATES DISTRICT COURT JUDGE